



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1997

Mr. John Steiner
Division Chief, Research and Opinions
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR97-2830

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111546.

The Austin Public Library (the "library") received an open records request for eleven categories of information pertaining to blocking software utilized by the library on computers used by the public for Internet access. You have submitted to this office a variety of documents responsive to the request that you contend are excepted from required public disclosure by sections 552.103, 552.107(1), and 552.124 of the Government Code.

Because section 552.103 is the most inclusive exception you raise, we will discuss it first. Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You contend that section 552.103(a) excepts the requested materials from required disclosure because two individuals have been quoted in newspaper articles as stating that they are each considering bringing suit against the library for its practice of "filtering" Internet information from the public.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated

litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

It is well established that where an individual has publicly stated on more than one occasion an intent to sue, these threats alone do not trigger section 552.103. Open Records Decision No. 331 (1982). *See also* Open Records Decision No. 351 (1982). Based on the limited facts before this office, we cannot conclude that you have met your burden in establishing the likelihood of litigation in this instance. Accordingly, the library may not withhold any of the requested information pursuant to section 552.103.

You also contend that section 552.107(1) of the Government Code protects many of the requested documents. Section 552.107(1) protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* After reviewing the documents before us, we agree that the documents you have marked as being protected under the attorney-client privilege may be withheld pursuant to section 552.107(1).

Finally, you contend that the complaint forms which library patrons have filed with the library in connection with the library's Internet access are protected from public disclosure pursuant to section 552.124 of the Government Code. Section 552.124 provides as follows:

(a) A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service [is excepted from required public disclosure] unless the record is disclosed:

(1) because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system and the record is not confidential under other state or federal law;

(2) under Section 552.023; or

(3) to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that:

(A) disclosure of the record is necessary to protect the public safety; or

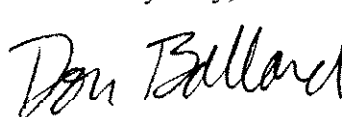
(B) the record is evidence of an offense or constitutes evidence that a particular person committed an offense.

(b) A record of a library or library system that is excepted from required disclosure under this section is confidential.

The clear intent of this exception is to protect library patrons' privacy interests under the First Amendment of the United States Constitution. *See generally* Open Records Decision No. 100 (1975). We believe that these privacy interests may be adequately served by redacting from the complaint forms the patrons' names and other identifying information, such as home addresses, telephone numbers, and, in some instances, e-mail addresses. With such redactions, the complaint forms would not be "a record of a library or library system . . . that identifies or serves to identify" a library patron. Thus, the identity of the library patron remains protected under section 552.124 while the nature of the patrons' complaints against the library, which are of legitimate public interest, remain available to the public. *See* Gov't Code § 552.001(b) (requiring liberal construction of Open Records Act in favor of granting request for information). *Cf.* Open Records Decision No. 100 (1975) (fact that person used library and owes late fines not constitutionally protected). Accordingly, we conclude that the library must withhold the complaint forms only that information that identifies or tends to identify library patrons; all remaining information in the complaint forms must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

Ref.: ID# 111546

Enclosures: Submitted documents

cc: Mr. Jay Jacobson
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(w/o enclosures)